S.B. Civil Writ Petition No.1447/97

U.O.I.
Vs.
Rajasthan Non-Government Educational Institutions Tribunal & Ors.

02/08/2005

Hon'ble Mr. Justice Ajay Rastogi

Mr. Kapil Mathur, for the petitioner
Mr. Mahesh Gupta, for the respondents

The instant writ petition has been filed by the petitioner Union of India against the order dt.8th August, 1996 [Ann.6] passed by the Rajasthan Non-Government Educational Institutions Tribunal, Jaipur.

The facts in brief are that the respondent No.2 Shyam Babu Maheshwari served as Reader in the Regional College of Education, Ajmer from 23rd July, 1964 and submitted his option in 1977 for CPF.

The present respondent No.2 submitted his application for change of option from CPF to GPF on 16th December, 1983 and retired from service on 31st July, 1984, while pending application, the scheme was introduced by the petitioner Union of India for change of option from CPF to GPF, but was made limited only to those who retired from service on or

after 31st July, 1985, but his application was rejected by the competent authority on 28th June, 1989 on the premise that circular cannot be invoked with regard to those who retired from service prior to 31st March, 1985.

So far as the question on merit is concerned, both the counsel agreed that the Apex Court in the case of **R.Subramaniam Vs. Chief Personnel Officer, Central Railway [AIR 1995 SC 983]** has decided the controversy and finally directed the respondent to accept change of option, those who retired prior to 31/3/85, from CPF to GPF after making adjustments of the benefits already availed under the scheme in question i.e. CPF.

The respondent No.2 earlier filed an appeal before the Central Administrative Tribunal, but the same was dismissed on the ground of jurisdiction. Later on, respondent No.2 preferred appeal before the Rajasthan Non-Government Educational Institutions Tribunal and the appeal preferred by him was dismissed on 8th May, 1995. But on review application filed by him taking note of the judgment of apex court [supra], the learned Tribunal allowed the appeal vide order dt.2nd November, 1995 [Ann.5] with direction to grant permission for change of option from CPF to GPF after due adjustments of benefits received by him under the scheme in

question i.e. CPF. Since it was an ex-parte order and the petitioner failed to appear despite service, application for recalling was filed, but that too was also dismissed by the learned Tribunal on merits after hearing the parties on 8th August, 1996 against which the present writ petition has been filed.

The counsel accept this fact that so far as the controversy on merit is concerned, the same has been decided by the apex court, but his one of the objection is that learned Tribunal has no jurisdiction to entertain the appeal which was preferred by respondent no.2.

From the material available on record, it depicts that despite opportunity being afforded to the petitioner, he failed to appear before the authority and no objection to this effect was raised at any stage and this is the first time by questioning the order of learned Tribunal the objection with regard to jurisdiction has been raised. In my opinion, in the present facts and circumstances, the objection at this stage is not available for the petitioner to raise particularly when the opportunity was afforded and he failed to raise before the concerned authority. Apart from it, once the controversy has been decided by the apex court in the judgment referred to supra, such technical objection at this stage, in my opinion, are not required to be examined.

Accordingly, the writ petition is hereby dismissed and the petitioner Union of India is directed to comply with the order of the Tribunal dt.2nd November, 1995 [Ann.5] within a period of three months. There shall be no order as to costs.

[Ajay Rastogi],J.

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